

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SABRA V. GILLINS and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, OH

*Docket No. 98-570; Submitted on the Record;
Issued August 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective September 24, 1997 on the grounds that she no longer had residuals of her January 3, 1997 employment injury after that date.

The Board finds that the Office properly terminated appellant's compensation effective September 24, 1997 on the grounds that she no longer had residuals of her January 3, 1997 employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

In the present case, the Office accepted that appellant sustained a temporary aggravation of a preexisting right shoulder sprain when she threw a package at work on January 3, 1997 and paid compensation for periods of disability. Appellant had been working in a light-duty position at the employing establishment since sustaining neck and right shoulder injuries in a nonwork-related vehicular accident on November 7, 1995. The Office later determined that there was a conflict in the medical opinion between Dr. Robert Gilliland, appellant's attending Board-

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

certified neurologist and the government physician, Dr. Costas Sarantopoulos, a Board-certified orthopedic surgeon acting as an Office referral physician, on the issue of whether appellant continued to have residuals of the January 3, 1997 employment injury. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Vydialinga G. Raghavan, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.⁵

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁶

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Raghavan, the impartial medical specialist selected to resolve the conflict in the medical opinion. The June 18, 1997 report of Dr. Raghavan, along with his July 9 and 30, 1997 supplemental reports, establish that appellant had no disability due to her January 3, 1997 employment injury after September 24, 1997.

The Board has carefully reviewed the opinion of Dr. Raghavan and notes that it has reliable, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Raghavan's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Raghavan provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁷ Dr. Raghavan provided medical rationale for his opinion by explaining that appellant did not display any objective evidence of her January 3, 1997 employment injury, temporary aggravation of a preexisting right shoulder sprain. He indicated that this type of injury typically resolves in about six weeks. He explained appellant's continuing problems by noting that they were related to her underlying right shoulder problems.⁸

In a form report dated September 12, 1997, Dr. Joseph Stefko, an attending Board-certified orthopedic surgeon, diagnosed right shoulder sprain/strain and impingement syndrome due to the January 3, 1997 employment injury and noted that appellant was totally disabled from May 9 to July 7, 1997 and partially disabled after July 7, 1997. This report, however, is of

⁵ Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. 8123(a). In a report dated April 30, 1997, Dr. Sarantopoulos indicated that appellant no longer had residuals of her January 3, 1997 employment injury. In contrast, Dr. Gilliland noted in reports dated April 28 and May 8, 1997 that appellant continued to have employment-related residuals.

⁶ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁷ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁸ Dr. Raghavan indicated that appellant displayed symptom magnification upon diagnostic testing.

limited probative value on the relevant issue of the present case in that it does not contain adequate medical rationale in support of its conclusions on causal relationship.⁹ Dr. Stefko did not describe the January 3, 1997 injury or explain how such a soft-tissue injury could have caused continuing total disability. The Office has not accepted that appellant sustained employment-related impingement syndrome and Dr. Stefko has not provided adequate medical rationale to support such a finding.¹⁰

The decision of the Office of Workers' Compensation Programs dated September 25, 1997 is affirmed.¹¹

Dated, Washington, D.C.
August 16, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁹ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁰ Appellant submitted additional evidence after the Office's September 25, 1997 decision, but the Board cannot consider such evidence for the first time on appeal; see 20 C.F.R. § 501.2(c).

¹¹ The record contains a December 31, 1997 decision in which the Office denied appellant's claim that she sustained an occupational injury after July 7, 1997. However, this decision is not the subject of the present appeal in that it was issued after the Board gained jurisdiction on December 9, 1997; see *Jimmy W. Galetka*, 43 ECAB 432, 433-44 (1992).